

DRAFT

Article ## Zoning

Underline Text = Proposed new language

~~Strikethrough text~~ = Proposed language to be deleted

To see if the Town will vote to amend the Eastham Zoning Bylaw, **SECTION 18 FLOOD PLAIN ZONING** by amending the following language:

~~18.6~~ **~~ARTICLE I— STATEMENT OF PURPOSE, EXISTING REGULATIONS~~**

18.1 **~~SECTION A— STATEMENT OF PURPOSE~~**

The purposes of the Floodplain District are to:

1. Ensure public safety through reducing the threats to life and personal injury.
2. Eliminate new hazards to emergency response officials.
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding.
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
5. Eliminate costs associated with the response and cleanup of flooding conditions.
6. Reduce damage to public and private property resulting from flooding waters.
7. Facilitate accurate insurance ratings and promote the awareness of flood insurance.

~~18.7~~ **~~SECTION B— EXISTING REGULATIONS~~**

- 18.2** All development in the district including structural and non-structural activities whether permitted by right or by special permit must be in compliance with the following:
- 780 CMR 3107.0 of the Massachusetts Building Code which addresses floodplain and coastal high hazard areas.
 - 310 CMR 10.0, Wetlands Protection Regulations, Department of Environmental Protection (DEP).
 - 310 CMR 13.00, Inland Wetlands Restriction, DEP
 - 310 CMR 12.00, Coastal Wetlands Restriction, DEP
 - 310 CMR 15, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP
 - Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

18.8 **ARTICLE II— FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD**
18.3 ELEVATION DATA

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Eastham designated as Zone A, AE, AH, AO, V or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. ~~The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Eastham panel numbers 25001C0244J, 25001C0263J, 25001C0264J, 25001C0407J, 25001C0409J, 25001C0417J, 25001C0426J, 25001C0427J, 25001C0428J, 25001C0429J, 25001C0433J, 25001C0436J, 25001C0437J, and 25001C0441J dated July 16, 2014.~~ The exact boundaries of the District shall be defined by the ~~may be defined as the 100-year base flood elevations shown on~~ 1%-chance base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

18.9 **ARTICLE III— USE REGULATIONS**

18.4 Flood plain District I is established as an overlay district to all other districts. The Town of Eastham requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the requirements of the Massachusetts State Building Code pertaining to construction in floodplains. Additionally any required federal permits must be obtained prior to the issuance of a development permit in the Flood plain District as follows:

1. Within Zones AH and AO on the FIRM, require adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.
2. Prohibit man-made alteration of sand dunes and salt marshes within Zone VE which would increase potential flood damage.
3. Provide that all new construction within Zone VE be located landward of the reach of mean high tide.
4. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
5. There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Department of Public Works, Building Inspector, Board of Appeals and Fire Department for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.
6. The Building Inspector shall (a) review all proposed development within the flood district to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law,

including Section 404 of the Federal Water Pollution and Control Act Amendments of 1972, U.S.C. 1334, and (b) obtain and maintain records of elevation and floodproofing levels for new construction or substantial alteration within the flood district.

7. In accordance with the Code of Federal Regulations (44 CFR §60.3(b)(5)(iii)), the lowest floor of any new construction or substantial improvement must be documented and maintained on record with the town. The most recent Elevation Certificate from the Federal Emergency Management Agency must be used to document elevations for all new construction and substantial improvements in the Special Flood Hazard Area.

~~18.5 In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.~~

18.10 ARTICLE IV— PERMITTED USES

18.5 The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and comply with other requirements:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses.
3. Outdoor recreational uses, including fishing, boating, play areas, etc.
4. Conservation of water, plants, wildlife.
5. Wildlife management areas, foot, bicycle, and/or horse paths.
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
7. Buildings lawfully existing prior to the adoption of these provisions.

18.1 PROHIBITED USES

18.6 The installation of underground systems for the storage of petroleum products (including but not limited to oil, gasoline, kerosene, and any hazardous materials) shall be prohibited in the 100 year flood plain (Zones A, AE, and VE on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency for the Town of Eastham). Storage system shall mean storage tank and all supply lines between storage tank and burner. Underground shall mean under the surface of the earth or under pavement, including cement floors of cellars or basements. Storage systems may be located in basements or cellars provided they are on or above the paved floor of the cellar or basement.

18.3 **SUBDIVISION PROPOSALS**

18.7 ~~All subdivision proposals and other proposed new developments greater than fifty (50) lots or five (5) acres whichever is the lesser shall include in such proposals base flood elevation data.~~

1. Base flood elevation data for subdivision proposals: When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

18.4 ~~Subdivision proposals and proposals for other developments, including their utilities and drainage, are located and designed to be consistent with the need to minimize flood damage.~~

2. All subdivision proposals and development proposals in the floodplain overlay district shall be reviewed to assure that:
 - (a) Such proposals minimize flood damage.
 - (b) Public utilities and facilities are located & constructed so as to minimize flood damage.
 - (c) Adequate drainage is provided.

18.5 **UNNUMBERED A ZONES**

18.8 ~~In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.~~

In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

18.9 WATERCOURSE ALTERATIONS

Watercourse alterations or relocations in riverine areas - In a riverine situation, the Director of Community Development shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities, especially upstream and downstream
- Bordering States, if affected
- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, 8th floor
Boston, MA 02114
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

18.10 RECREATIONAL VEHICLES

Recreation Vehicles: In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

18.2 NEW ZONE DESIGNATION

18.11 Any new construction, alteration of structures or other development which is removed from the A or V zones by subsequent flood insurance map amendments shall only have to meet the requirements of its new zone designation.

18.12 ABROGATION AND GREATER RESTRICTION

The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

18.13 DISCLAIMER OF LIABILITY

The degree of flood protection required by this bylaw [ordinance] is considered reasonable but does not imply total flood protection.

18.14 REQUIREMENT TO SUBMIT NEW TECHNICAL DATA

If the Town of Eastham acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief
99 High St., 6th floor, Boston, MA 02110

And copy of notification to:

Massachusetts NFIP State Coordinator
MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA
02114

18.15 VARIANCES TO BUILDING CODE FLOODPLAIN STANDARDS

If the State issues variances to the flood-resistant standards as found in the state building code, the community will use this text for local adoption:

The Town/City will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.

The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

18.16 VARIANCES TO LOCAL ZONING BYLAWS RELATED TO COMMUNITY COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if:

1) Good and sufficient cause and exceptional non-financial hardship exist;

2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and

3) the variance is the minimum action necessary to afford relief.

18.17 SEVERABILITY

If any section, provision or portion of this bylaw [ordinance] is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective

And further to amend **Section 21 DEFINITIONS** by adding and amending the following terms:

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

HISTORIC STRUCTURE (Floodplain Bylaw) means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
- [US Code of Federal Regulations, Title 44, Part 59]

~~NEW CONSTRUCTION, FLOODPLAIN MANAGEMENT: Structures for which the ‘start of construction’ commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates,~~

NEW CONSTRUCTION: means structures for which the ‘start of construction’ commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later. including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

RECREATIONAL VEHICLE (see also MANUFACTURED HOME) means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [US Code of Federal Regulations, Title 44, Part 59].

SPECIAL FLOOD HAZARD AREA: is the land in a community's flood plain subject to a one percent or greater change of flooding in any given year. The area may be designated on the FIRM as Zone A, AO, ~~A1-30~~, AE, A99, AH, ~~V1-30~~, VE.

START OF CONSTRUCTION: The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

SUBSTANTIAL REPAIR OF A FOUNDATION: When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC].

VARIANCE (Floodplain Bylaw) means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59].

VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

or take any action relative thereto.

By Eastham Planning Board

Summary: The National Flood Insurance program (NFIP) encourages communities to adopt and enforce floodplain management regulations that help mitigate the effects of flooding. Once a

community voluntarily adopts and enforces floodplain management provisions that meet at least the minimum requirements of the NFIP, its residents are then eligible to obtain flood insurance through the NFIP. Because the Town participates in the NFIP and the voluntary Community rating System program, property owners are entitled to a 10% discount on flood insurance. Adoption of this article will ensure Eastham's compliance with the last NFIP regulations and eligibility for flood insurance discounts.

BOARD OF SELECTMEN RECOMMENDATION:

FINANCE COMMITTEE RECOMMENDATION:

PLANNING BOARD RECOMENDATION:

(2/3 Majority vote required)